

Katherine C. Chamberlain, OSB #042580
katherinec@mhb.com
Jesse A. Wing, *pro hac vice*
jessew@mhb.com
Of Attorneys for Plaintiff Prison Legal News
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, Washington 98104-1745
(206) 622-1604

Marc D. Blackman, OSB #730338
marc@ransomblackman.com
Of Attorneys for Plaintiff Prison Legal News
Ransom Blackman LLP
1001 SW 5th Ave., Suite 1400
Portland, OR 97204
(503) 228-0487

Lance Weber, *pro hac vice*
lweber@humanrightsdefensecenter.org
Of Attorneys for Plaintiff Prison Legal News
Human Rights Defense Center
1037 Western Avenue, 2nd Floor
West Brattleboro, VT 05303
(802) 257-1342

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

PRISON LEGAL NEWS, a project of the
HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

UMATILLA COUNTY; UMATILLA
COUNTY SHERIFF'S OFFICE; JOHN
TRUMBO, individually and in his capacity as
Umatilla County Sheriff, STEWART HARP,
individually and in his capacity as Umatilla
County Jail Commander; THORNE HEARN, in
his individual and official capacity,

Defendants.

No. 2:12-cv-01101-SU

DECLARATION OF CHARLES F.
HINKLE IN SUPPORT OF PLAINTIFF'S
FEE PETITION

DECLARATION OF CHARLES F. HINKLE SUPPORT OF
PLAINTIFF'S FEE PETITION (No. 2:12-cv-01101-SU) - 1

MACDONALD HOAGUE & BAYLESS
705 Second Avenue, Suite 1500
Seattle, Washington 98104
Tel 206.622.1604 Fax 206.343.3961

I, Charles F. Hinkle, declare under penalty of perjury as follows:

1. This declaration is submitted in support of Plaintiff's application for an award of attorneys' fees in this case. I have personal knowledge of and am competent to testify to the facts set forth herein.

2. MacDonald Hoague & Bayless has asked me to express my opinion on the reasonableness of the hourly rates of attorneys Jesse Wing, Marc Blackman, Katie Chamberlain, Lance Weber, Alissa Hull, and of paralegals Carrie Wilkinson, Kara McBride, and Zach Phillips.

3. I am a 1971 graduate of Yale Law School. I have practiced law in the litigation department of Stoel Rives LLP and its predecessor law firms since August 1971. I became a partner in the firm in 1977. I retired from the full-time practice of law at the end of 2010, but I still handle a number of matters for certain clients. Since 1980, most of my practice has been in the areas of constitutional law, media law, public records, and election law.

4. I have extensive experience litigating cases in the state courts of Oregon, California, Idaho, Washington, and Alaska, and in federal courts in Oregon and California.

4.1. Federal court cases that I have litigated through appeal include *Howard v. Crim. Info. Servs.*, 654 F.3d 887 (9th Cir. 2011) (Driver's Privacy Protection Act); *Gardner v. Martino*, 563 F.3d 981 (9th Cir. 2009) (libel); *Englert v. MacDonell*, 551 F.3d 1099 (appellate jurisdiction; anti-SLAPP statute); *Horton v. Multnomah County*, 197 Fed. Appx. 635 (9th Cir. 2006) (election law); *Fred Meyer, Inc. v. Casey*, 67 F.3d 1412 (9th Cir. 1995) (election law; First Amendment); *City of Alturas v. Pac. Power & Light Co.*, 1995 U.S. App. LEXIS 13518 (9th Cir. 1995) (eminent domain); *Moser v. FCC*, 46 F.3d 970 (9th Cir. 1995) (commercial speech; telemarketing); *McIver v. Columbia Broadcasting System*, 1993 WL 463197, 21 Media L. Rep. 1854 (D. Or. 1993), *aff'd* 70 F3d 120 (9th Cir 1995) (libel); *Hickey v. Capital Cities/ABC, Inc.*, 792 F. Supp. 1195 (D.

Or. 1992), *aff'd*, 999 F.2d 543 (9th Cir. 1993) (libel); *Oregonian Publishing Co. v. United States Dist. Court*, 920 F.2d 1462 (9th Cir. 1990) (First Amendment right of access to plea agreements); *Burton v. Cascade School Dist.*, 512 F.2d 850 (9th Cir. 1975) (gay rights; due process; education law).

4.2. Cases that I have litigated through appeal in the Oregon state courts include *Doe v. Corp. of the Presiding Bishop*, 352 Ore. 77, 280 P.3d 377 (2012) (application of “open courts” provision of Oregon Constitution to trial exhibits); *Nakashima v. Oregon State Bd. of Educ.*, 344 Ore. 497, 185 P.3d 429 (2008) (religious liberty); *Lehman v. Bradbury*, 333 Ore. 231, 37 P.3d 989 (2002) (successful challenge to term limits); *City of Portland v. Oregonian Pub. Co.*, 200 Ore. App. 120, 112 P.3d 457 (2005) (public records; access to internal police bureau investigation reports); *Stranahan v. Fred Meyer, Inc.*, 331 Ore. 38, 11 P.3d 228 (2000) (Oregon Constitution allows private retailer to bar initiative petitioning on store property); *City of Portland v. Anderson*, 163 Ore. App. 550, 988 P.2d 402 (1999) (access to police bureau disciplinary records); *Oregonian Pub. Co. v. Portland School Dist. No. 1J*, 329 Ore. 393, 987 P.2d 480 (1999) (access to school district employee records); *Bryant v. Thompson*, 324 Ore. 141, 922 P.2d 1219 (1996) (challenge to resumption of capital punishment); *Moser v. Frohnmayer*, 315 Ore. 372, 845 P.2d 1284 (1993) (Oregon’s free speech clause fully protects commercial speech); *Merrick v. Board of Higher Education*, 116 Ore. App. 258, 841 P.2d 646 (1992) (Oregon’s first anti-gay rights ballot measure held unconstitutional); *Oregonian Pub. Co. v. O’Leary*, 303 Ore. 297, 736 P.2d 173 (1987) (Oregon Constitution guarantees access to hearing in criminal trial); *Kay v. David Douglas School Dist. No. 40*, 79 Ore. App. 384, 719 P.2d 875 (1986) (prayer at public high school graduation violates Oregon Constitution), *rev’d on mootness grounds*, 303 Ore. 574, 738 P.2d 1389 (1987).

4.3. Cases that I have litigated through appeal in California and Washington are *Walmart, Inc. v. Progressive Campaigns, Inc.*, 102 Cal. Rptr. 2d 392 (Cal. App.

2000) (California constitution allows private retailer to bar initiative petitioning on store property), and *Walmart, Inc. v. Progressive Campaigns, Inc.*, 139 Wash.2d 623, 989 P.2d 524 (1999) (same, under Washington constitution).

5. I have filed attorney fee applications in many of the cases cited in Paragraphs 4.1 and 4.2 of this Declaration, and in several other cases at the trial and appellate level. I filed my most recent attorney fee application in February 2011, in *Oregonian Publishing Company v. Waller*, Multnomah County (Or.) Circuit Court No. 0911-16280, *appeal pending* (Oregon Court of Appeals No. A148488), in which I represented the prevailing plaintiff in a case under Oregon's Public Records Law. The trial court awarded the full amount of my request, at the hourly rate that I requested for my time (\$450).

6. I am familiar with the rates charged by trial attorneys in Portland, Oregon. My law firm participates in regular market surveys of billing rates charged by comparable law firms in the geographical areas where it practices. These other firms include Perkins Coie, Preston Gates, Lane Powell, and Foster Pepper, all of which are large Pacific Northwest law firms with practices similar to that of Stoel Rives, and all of which have offices in Portland, Oregon. The latest available survey of rates charged by these firms showed that the rates charged by Stoel Rives were no higher than the average rates charged by comparable firms. My own hourly rate of \$450 in 2011 was comparable to, and in several cases lower than, the rates charged by other Portland trial attorneys with experience and law practices comparable to mine.

7. In support of my fee application in *Oregonian Publishing Company v. Waller*, mentioned in Paragraph 5 of this Declaration, and in support of fee applications that I have submitted in other cases, I have from time to time conducted my own personal surveys of litigation attorneys in Portland law firms. I have spoken personally with the following attorneys in conducting those surveys. Michael Simon, then a partner in the Portland office of Perkins Coie who frequently litigated constitutional law cases before being appointed to the federal bench, told me on January 8, 2008, that his standard billing rate for work done in 2007 was \$495

per hour. Mr. Simon had been practicing law since 1981, and was admitted to the Oregon Bar in 1986. Daniel Skerritt (Oregon Bar admission 1968), a litigation partner in the Portland firm of Tonkon Torp LLP, told me on January 9, 2008, that his standard billing rate for work done in 2007 was \$475 per hour. Robert Maloney (Oregon Bar admission 1967), a trial attorney in the Portland office of Lane Powell, told me on June 19, 2008, that his normal hourly rate in 2008 was \$440. Donald Joe Willis (Oregon Bar admission 1971), a trial attorney at Schwabe Williamson, told me on June 19, 2008, that his normal hourly rate in 2008 was \$440. Bruce Rubin (Oregon Bar admission 1976), a trial attorney at Miller Nash, told me on June 19, 2008, that the normal hourly rate at that time for both Peter Richter (Oregon bar admission 1971) and Dennis Rawlinson (Oregon bar admission 1976), two of Rubin's partners in the trial section at Miller Nash, was \$440. James McDermott (Oregon bar admission 1993), a trial attorney at Ball Janik, told me on June 27, 2008, that his hourly rate was \$475. Stephen English (Oregon bar admission 1973), a trial attorney who was then at Bullivant Houser, told me on July 2, 2008, that his hourly rate was \$500.

8. I have reviewed the resumes of attorneys Jesse Wing, Marc Blackman, Katie Chamberlain, Lance Weber, and Alissa Hull, and paralegals Carrie Wilkinson, Kara McBride, and Zach Philips. I have also communicated with attorney Jesse Wing about the background of the lawsuit, and I have been provided the following information, set out in Paragraphs 8.1 through 8.15, about the experience and qualifications of the individuals named in the preceding sentence.

8.1. Jesse Wing has represented successfully plaintiffs for over 21 years on First Amendment, employment discrimination, fair housing, and cases involving civil rights. In addition to trying cases, his legal work has resulted in advancing the law in these area through establishing precedent. *See, e.g., Clairmont v. Sound Mental Health*, 632 F.3d 1091 (9th Cir. 2011) (reversing summary judgment for public official and

remanding for trial First Amendment claim for retaliation based on plaintiff's testimony in court).

8.2. Mr. Wing has repeatedly, and successfully, challenged prisoner censorship and denial of due process through injunctions and consent decrees, including significant Ninth Circuit precedent. *See Prison Legal News v. Lehman*, 397 F.3d 692 (9th Cir. 2005) (affirming permanent injunctions under First and Fourteenth Amendments against WA DOC censorship of catalogs and non-subscription mail); *Prison Legal News v. Spokane County*, 2011 WL 4073615 (E.D. Wa. Aug. 3, 2011) (plaintiff obtained a consent decree under the First Amendment permanently enjoining government censorship; payment of damages, fees and costs); *Prison Legal News v. Chelan County*, No. CV-11-337-EFS (E.D. Wa. filed September 9, 2011) (plaintiff obtained a consent decree under the First Amendment permanently enjoining government censorship; payment of damages, fees and costs); *Prison Legal News v. Columbia County*, No. 3:12-CV-71-SI (May 29, 2012) (plaintiff obtained a preliminary injunction under First Amendment enjoining government censorship; case is ongoing); and this case, *Prison Legal News v. Umatilla County*, in which Plaintiff obtained an substantial Offer of Judgment shortly after the case was filed.

8.3. In addition to his work for clients, Mr. Wing has written several deskbook chapters on civil rights law as well as for six years authoring a quarterly newsletter on employment law, and he has given many CLE presentations and trainings to public agencies. He also has served as an expert witness and has been serving for many years as President of the American Civil Liberties Union of Washington and before that as Chairman of the Washington Employment Lawyers Association.

8.4. Marc Blackman has been practicing law for 38 years. After Yale Law School, he clerked for the Oregon Supreme Court and worked as an Assistant United States Attorney for the District of Oregon. He founded Ransom Blackman LLP in 1977.

Throughout his private practice, Mr. Blackman has represented clients charged with crimes in federal and state court as well as clients accused of violations before the Securities and Exchange Commission, the Oregon State Bar, and the Oregon Medical Board, and other entities. Mr. Blackman has served as the President of the Multnomah Bar Association, Chair of the Oregon State Bar Bar-Press Broadcasters Council, President of the Gus J. Solomon American Inn of Court, and on many committees of the United States District Court for the District of Oregon and the Oregon State Bar. Recently, *The Oregonian* called him “one of Oregon’s best criminal defense lawyers.” See http://www.oregonlive.com/pacific-northwest-news/index.ssf/2012/08/catholic_priest_accused_of_dru.html.

8.5. Of particular relevance, Mr. Blackman litigated against the Oregon Department of Corrections establishing important precedent on a publisher’s right to communicate with prisoners and that due process is due when a publisher’s mail is censored. See *Prison Legal News v. Cook* (CV-01344) (D. Or. 1998) (district court granted summary judgment for defendants); *Prison Legal News v. Cook*, 238 F.3d 1145, 1153 (9th Cir. 2001) (Ninth Circuit reversed on appeal and held that “ban on standard rate mail is unconstitutional as applied to subscription non-profit organization mail”). Mr. Blackman served as local counsel in the instant lawsuit.

8.6. Katie Chamberlain has practiced law for eight years. She graduated from the University of Oregon School of Law in 2004 and then was employed as a civil rights attorney at Walters Chanti & Zennaché in Eugene, Oregon. Then, in 2007, she joined MacDonald Hoague & Bayless in Seattle, Washington, where as a partner her practice focuses on plaintiff’s employment and civil rights litigation. She is licensed to practice in Oregon, Washington, and California.

8.7. Ms. Chamberlain has shared first chair responsibilities in litigating four successful prison censorship lawsuits: *Prison Legal News v. Spokane County*, 2011 WL

4073615 (E.D. Wa. Aug. 3, 2011) (plaintiff obtained a consent decree under the First Amendment permanently enjoining government censorship; payment of damages, fees and costs); *Prison Legal News v. Chelan County*, No. CV-11-337-EFS (E.D. Wa. filed September 9, 2011) (plaintiff obtained a consent decree under the First Amendment permanently enjoining government censorship; payment of damages, fees and costs); *Prison Legal News v. Columbia County*, No. 3:12-CV-71-SI (Oregon Dist. Ct. filed January 13, 2012) (plaintiff obtained a preliminary injunction under First Amendment enjoining government censorship; case is ongoing); and this case, *Prison Legal News v. Umatilla County*, in which Plaintiff obtained an substantial Offer of Judgment shortly after the case was filed.

8.8. Ms. Chamberlain has also served as a leader in many legal and community service organizations in Oregon and Washington: the Lane County Bar Association's Employment Law Committee (chair), the Board of Directors for HeadStart of Lane County, Oregon New Lawyers Division's Law School Outreach Committee (chair, for which she received the Oregon New Member Service Award from the Oregon State Bar in 2006); the Board of Directors of Legal Voice, Washington Employment Lawyers Association, and the Pacific Coast Labor & Employment Law Conference's Planning Committee (co-chair of EEO and Special Topics committees).

8.9. Lance Weber has been a practicing lawyer for 15 years. He is admitted to the bars of New Hampshire, Missouri, Kansas, and recently passed the Florida bar exam. He is employed as in-house counsel by the Human Rights Defense Center (HRDC), which is the parent organization of Prison Legal News (PLN) since September 2010. From 1997 through 2010, Mr. Weber practiced law in Kansas City, Missouri and in the Kansas City metropolitan area with cases in the various state and federal courts in Western Missouri and Eastern Kansas, focusing on criminal defense, and some personal injury and police misconduct cases.

8.10. HRDC and PLN's stated mission is education, advocacy, and outreach to further the rights of incarcerated individuals and their families. As Director and Chief Counsel of the Litigation Project of HRDC, Mr. Weber represents Prison Legal News in disputes about censorship of Prison Legal News publications and correspondence in jurisdictions across the country. In the past two years, Mr. Weber has contributed to the following successful prison censorship cases: *Prison Legal News v. Spokane County et. al.*, E.D. Wa., CV-11-029-RHW (2011); *Prison Legal News v. Chelan County et. al.*, E.D. Wa., CV-11-337-EFS (2011); *Prison Legal News v. Berkeley County Sheriff*, D.SC., 2:10-CV-02594-MBS (2012); *Prison Legal News v. Sacramento County*, E.D. Ca., CV-00907-JAM-DAD (2012); and he is one of the counsel of record in the *Prison Legal News v. Columbia County*, D. Or., CV-71-SI (2012); and this case.

8.11. Alissa Hull is staff attorney at HRDC. In this capacity, she investigates and litigates prison censorship and denial of due process claims, among others. She is admitted to both the New York and New Jersey bars, and recently passed the Florida bar exam. Since becoming a lawyer in 2010, she has practiced criminal law and worked for the Center for Constitutional Rights and the National Lawyers' Guild's Prison Law Project since 2007. She worked for the Southern Poverty Law Center's School to Prison Reform Project in New Orleans and the Legal Aid Society's Prisoners' Rights Project in New York. She is a relatively new lawyer but her knowledge and experience with prisoners' rights is unusual for the number of years that she has been in practice.

8.12. Carrie Wilkinson has been a paralegal for 22 years. She has a paralegal certificate and has worked as a paralegal at the Seattle law firm MacDonald Hoague and Bayless for over 18 years. She has been a litigation paralegal for over ten years and has worked on many civil rights cases in a variety of areas, including employment discrimination, police misconduct, fair housing. In particular, she has worked on many First Amendment prison censorship cases: *Prison Legal News v. Lehman*, 272 F.Supp.2d

115 (W.D. Wa. 2003), *affirmed*, *Prison Legal News v. Lehman*, 397 F.3d 692, 695 (9th Cir. 2005) (affirming summary judgment for plaintiff on claim for permanent injunctive relief on First and Fourteenth Amendment claims). She has also been the primary paralegal on the following cases: *Prison Legal News v. Spokane County*, 2011 WL 4073615 (E.D. Wa. Aug. 3, 2011); *Prison Legal News v. Chelan County*, CV-11-337-EFS (E.D. Wa. September 9, 2011); *Prison Legal News v. Columbia County*, CV-71-SI (D. Ore. January 13, 2012). And, she was the primary paralegal at MacDonald Hoague & Bayless on this lawsuit.

8.13. After graduating with a 3.93 GPA from Boston College, Kara McBride was employed as a paralegal for MacDonald Hoague & Bayless in 2011-12. At the firm, she processed evidence, interviewed prisoner witnesses, and drafted declarations, which she did in this lawsuit as well as in the following prison censorship cases: *Prison Legal News v. Chelan County*, No. CV-11-337-EFS (E.D. Wa. September 9, 2011); *Prison Legal News v. Columbia County*, No. 3:12-CV-71-SI (D. Ore. January 13, 2012). Now, Ms. McBride is a first year law student at Stanford University School of Law.

8.14. Zach Phillips is a graduate of Hampshire College. For the past four years, Mr. Phillips has been a paralegal for HRDC. As such, he conducts investigations into whether jails and prisons are violating prisoners' rights and censoring PLN's publications and mail. To accomplish this he tests their policies and practices, corresponds with prisoner witnesses, and collects and preserves evidence. The investigations that he conducts form the basis deciding whether to pursue litigation. And, the results of his investigations are the primary basis for litigation. Mr. Phillips has investigated and worked on prisoner rights litigation in California, Virginia, Washington, South Carolina, and New York.

8.15. I understand that the billing rates for the attorneys and paralegals identified above are: Jesse Wing (\$400); Marc Blackman (\$400); Katie Chamberlain

(\$300); Lance Weber (\$350); Alissa Hull (\$210); Carrie Wilkinson (\$150); Kara McBride (\$90); and Zach Phillips (\$105).

9. In addition to the facts set out in Paragraphs 8.1 through 8.15 of this Declaration, I am personally familiar with the ability and reputation of Marc Blackman. I have known Mr. Blackman for more than 30 years, and am personally familiar with the very high quality of his legal work and with the very high reputation that he has in the Portland legal community.

10. I have been a cooperating attorney with the American Civil Liberties Union throughout my career. During that time, both the ACLU office in Portland and I personally have received many requests for assistance from prisoners, often relating to First Amendment issues. I know that court challenges to prison policies that affect prisoners' First Amendment rights can be very difficult and time consuming, and I know that it is often very difficult to find qualified attorneys who are willing to take on that kind of litigation. In my opinion, it would be difficult to find lawyers in Pendleton, Oregon, who are both (a) sufficiently experienced in First Amendment law and criminal law to litigate this kind of case and (b) willing to handle contingent fee civil rights litigation like this case. In my opinion, it is reasonable and appropriate to award fees in this case based on market rates for attorneys and paralegals in Portland, Oregon.

11. Based on the facts set out in this Declaration, it is my opinion that the hourly rates sought by Plaintiff's attorneys and paralegals are reasonable and justifiable.

I declare under penalty of perjury of the laws of the United States and the State of Oregon that the foregoing statement is true and accurate to the best of my knowledge and belief.

DATED this 20th day of September, 2012, in Portland, Oregon.

/s/ Charles F. Hinkle
CHARLES F. HINKLE

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Counsel for Defendants

Steven A Kraemer

sak@hartwagner.com

Kari Furnanz

kaf@hartwagner.com

Hart Wagner LLP

1000 SW Broadway Ste 2000

Portland OR 97205

Phone: 503 222-4499

Fax: 503 222-2301

DATED this 31st day of October, 2012.

MACDONALD HOAGUE & BAYLESS

/s/ Katherine C. Chamberlain

KATHERINE C. CHAMBERLAIN

OSB #042580

(206) 622-1604

Of Attorneys for Plaintiff Prison Legal News